APPENDIX A

COMPLAINT IN LIEU OF PREROGATIVE WRIT

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—ATLANTIC COUNTY

Docket No. L-29242-66

TOWNSHIP OF HAMILTON TOWNSHIP, etc., *et al.*,

Plaintiffs,

vs.

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ATLANTIC, etc., *et al.*,

Defendants.

} Civil Action.

PATRICK T. McGAHN, JR.,
Attorney for Petitioners,
1421 Atlantic Avenue,
Atlantic City, New Jersey.

COMPLAINT

(*Filed* 5/16/67.)

The Township of Hamilton Township, in the County of Atlantic, a Municipal Corporation of the State of New Jersey, and William Davies, Nicholas Rettino, Robert J. Kleuser, Michael Butler and Robert H. Morris, all residents of Mays Landing, County of Atlantic, individually, as citizens and taxpayers of Atlantic County, and as the duly elected members of the Hamilton Township Committee, complaining against the defendants, say:

1. Plaintiffs recognize that there is a definite and urgent need for more adequate court facilities in Atlantic County without unnecessary delay.

2. Plaintiffs contend that the Board of Chosen Freeholders of Atlantic County are bound by law to locate all permanent court facilities of Atlantic County at the County Seat in Mays Landing, New Jersey.

3. Temporary civil court facilities for Atlantic County have been furnished by the defendants, Board of Chosen Freeholders of Atlantic County, in the Guarantee Trust Building, in Atlantic City, County of Atlantic.

4. On June 30, 1966, the Honorable Anthony J. Cafiero, Judge of the New Jersey Superior Court, ordered civil court facilities to be established on a permanent basis in Atlantic City, County of Atlantic. A copy of the Order is attached and marked Exhibit "A".

5. Pursuant to this Order, the defendant, Board of Chosen Freeholders of Atlantic County passed a resolution on December 14, 1966, and took other necessary action authorizing the said Board to enter into a 25 year lease with the defendant, G. T. B. Company, for the purpose of providing such court facilities in Atlantic City, County of

Atlantic. A copy of this resolution is attached and marked Exhibit "B".

6. Plaintiffs question the authority of the defendant, Board of Chosen Freeholders of Atlantic County to establish permanent court facilities as proposed in any place other than the County Seat of Atlantic County, to wit, Mays Landing, maintaining that the provisions of New Jersey Constitution, Article I, Section 21, and Amendment 9 of the United States Constitution, reserve this right to the people.

7. Plaintiffs maintain that the authority granted to the defendant, Board of Chosen Freeholders of Atlantic County, by N. J. S. A. 40:32–3, to erect or lease such buildings as may be necessary and suitable for the accommodation of the courts required to be held in Atlantic County, does not give the defendant, Board of Chosen Freeholders of Atlantic County, power to erect such permanent facilities at a place other than the County Seat, and that the implied powers granted to defendants under New Jersey Constitution, Article IV, Section 7, paragraph 11, refer only to temporary court facilities.

8. Plaintiffs maintain that the County Courts do not have jurisdiction or authority to sit at a place other than the County Seat on a permanent basis.

9. Plaintiffs maintain that the Order of Honorable Anthony J. Cafiero, Judge of the Superior Court, set forth in paragraph 4 of this Complaint, is in violation of Article 3, Section 1 of the New Jersey Constitution and the 14th Amendment of the United States Constitution.

10. Plaintiffs contend that if a 25 year lease to furnish permanent court facilities is entered into between the defendant, Board of Chosen Freeholders of Atlantic County, and the defendant, G. T. B. Company and the partners of that partnership, Elias G. Naame and Herman Orman,

immediate, substantial and irreparable harm will result, in that the citizens of Atlantic County would be bound by a 25 year obligation to pay rent for a building within which the Courts could not legally function.

11. Neither plaintiffs nor defendants have sought by any other legal action to have adjudicated their respective rights involving the matter herein in dispute.

WHEREFORE, plaintiffs demand judgment whereby this Court shall:

A. determine the validity of the said Resolution dated December 14, 1966, of the Board of Chosen Freeholders of Atlantic County authorizing the Board to enter into a lease for permanent court facilities.

B. determine whether the defendant, Board of Chosen Freeholders of Atlantic County has the authority to enter into a contract or lease whereby permanent court facilities shall be established other than at the County Seat.

C. enjoin the defendant, Board of Chosen Freeholders of Atlantic County and its servants, agents and employees, acting under their Resolution dated December 14, 1966, from entering into such a lease.

D. enjoin the Board of Chosen Freeholders of Atlantic County and its servants, agents and employees, from carrying out the terms of the said lease until the rights of the parties herein are finally determined.

E. enjoin the defendant, G. T. B. Company and the partners of that partnership, Elias G. Naame and Herman Orman, or their servants, agents and employees, from entering into such a lease or acting under such lease.

F. declare the Order of Honorable Anthony J. Cafiero, Judge of the Superior Court, dated June 30, 1966, to be

null and void as to the location of permanent court facilities in Atlantic City.

G. afford such other and further relief as may be proper to prevent immediate, substantial and irreparable harm to the parties hereto.

/s/ PATRICK T. MCGAHN, JR.
PATRICK T. MCGAHN, JR.
Attorney for Plaintiffs.

EXHIBIT "A"

Superior Court of New Jersey
Law Division, Atlantic
County

In the Matter of Providing Court Facilities for the Trial of Civil matters in Atlantic County. } ORDER

By virtue of an order heretofore entered under date of April 12, 1926 by the late Luther A. Campbell, Justice of the former Supreme Court, it was ordered that the Supreme and Circuit Court issues triable in the County of Atlantic Shall be tried in the Courtroom in the Guarantee Trust Building, Atlantic City, Atlantic County, New Jersey.

Under recent date, the Atlantic County Bar Association in regular meeting duly assembled, adopted a resolution in which it deplores the condition which exists, and which it terms inadequate and detrimental to due process and to the proper administration of justice; and urges the Assignment Judge of Atlantic County to exercise the powers of his office in calling upon the Board of Chosen Freeholders of Atlantic County to provide sufficient and adequate Court facilities for the trial of civil causes in one building located in the City of Atlantic City; and

The undersigned being fully satisfied of the existence and the effects of said condition and the imperative need for such facilities;

It is on this 30th day of June, 1966, ORDERED that the Board of Chosen Freeholders of the County of Atlantic provide the facilities as requested without unnecessary delay; and that the trial of all civil issues triable in the Civil Courts of the County of Atlantic shall be tried in the facilities to be so provided.

This order shall take effect immediately.

A. J. Cafiero, /s/
A. J. Cafiero, J.S.C.
Assignment Judge
Atlantic County

EXHIBIT "B"

(RE: Additional Court Facilities)

RESOLUTION

WHEREAS, the Director of this Board did appoint a special committee for the purpose of investigating and making recommendations for additional court facilities, which were deemed necessary and was pursuant to an order of the Honorable A. J. Cafiero, Assignment Judge for Atlantic County; and

WHEREAS, such committee has thoroughly investigated the feasibility and the location of such required court facilities and has further explored the various areas which would be most advantageous for the public benefit in connection therewith; and

WHEREAS, such committee has interviewed numerous sources for the purpose of either constructing or renting adequate court facilities and has received proposals and suggestions therein, which they have thoroughly considered; and

WHEREAS, as a result of their continued efforts, the said special committee has received a proposal from the G. T. B. Company, for leasing court room facilities which this committee feels is the best proposal under the circumstances and at a rental basis which would be acceptable to the Board of Chosen Freeholders for the purpose of effectuating the order of the Honorable A. J. Cafiero, in connection therewith and the matter is now before this Board for its consideration, upon the recommendation of such special committee aforesaid.

NOW THEREFORE BE IT RESOLVED by the Board of Chosen Freeholders that it does hereby accept the offer of the G. T. B. Company to rent to the County of Atlantic for court facilities an area of 5500 square feet at $5.75 per square foot, per year, based on a twenty-five year lease for the purpose among other things of providing two additional court rooms to be constructed in a building adjacent to the present Guarantee Trust Building, North Carolina and Atlantic Avenues, Atlantic City, New Jersey.

BE IT FURTHER RESOLVED that the County Solicitor be and he is hereby authorized and directed to negotiate a lease with the G. T. B. Company for the said 5500 square feet referred to at $5.75 per square foot, per year, under the terms of a twenty-five year lease with the County of Atlantic, which lease will likewise provide for an escalator clause, covering additional increase in taxes, for any additional taxes assessed over the first year on a pro rata percentage basis. Said lease shall likewise provide for the lessor to furnish the services of lighting, air conditioning, heating,

cleaning services, Judges' bench, witness stand, jury box and required rails.

BE IT FURTHER RESOLVED that in addition to the two court rooms provided by the G. T. B. Company in accordance with the above lease referred to, the Board of Chosen Freeholders has provided two court rooms in Mays Landing and are in the process of providing one more additional court room in Mays Landing and two court rooms already provided on the seventh floor in the Guarantee Trust Building, thus making available for court facilities of seven court rooms, which are being completely modernized and adequately refurbished for the administration and use of our courts in Atlantic County.

ADOPTED: December 14, 1966.

IN THE

Supreme Court of New Jersey

SEPTEMBER TERM, 1967

No. A-55

TOWNSHIP OF HAMILTON TOWNSHIP, etc., *et al.*,
Plaintiffs-Appellants,

VS.

BOARD OF CHOSEN FREEHOLDERS, etc., *et als.*,
Defendants-Respondents.

OPINION

Argued October 24, 1967—Decided November 20, 1967.

On appeal from the Superior Court, Law Division, Atlantic County.

Mr. Patrick T. McGahn, Jr. argued the cause for plaintiffs-appellants.

Mr. Isaac C. Ginsburg, attorney for the Atlantic County Bar Association, argued the cause for defendants-respondents *(Mr. Abraham Rosenberg,* Assistant Solicitor of Atlantic County, and *Mr. Robert H. Davisson,* attorney for G. T. B. Company, a partnership, Elias G. Naame and Herman Orman, individually and as partners, and Edwin H. Helfant, guardian *ad litem* for Joseph E. Naame, an infant, joined in the brief).

The opinion of the court was delivered.

Opinion

PER CURIAM

Plaintiffs' action in lieu of prerogative writs challenged the validity of a resolution of the Atlantic County Board of Chosen Freeholders authorizing a 25-year lease of certain premises in Atlantic City in order to provide for additional courtrooms. They do not question the pressing need of more courtrooms but contend that as a matter of law all permanent facilities intended for constitutional courts (such as the County and Superior Courts) must be located at Mays Landing, the county seat. Summary judgment went in defendants' favor after a full hearing. The resultant appeal is before this court on direct certification.

On June 30, 1966 the Atlantic County Bar Association adopted a resolution urgently requesting the assignment judge to issue an order calling upon the freeholder board "to provide sufficient court facilities for the trial of civil causes in one building in the City of Atlantic City." The judge entered such an order *ex parte*. The freeholder board then appointed a special committee which, after thoroughly exploring various locations and the feasibility of either constructing or renting the needed facilities, recommended the lease in question as the best possible arrangement. On December 14, 1966 the board, after reviewing the work of its committee and consulting with the assignment judge, passed the resolution here under attack.

Plaintiffs claim that the trial judge was disqualified from hearing and determining the in lieu action because his prior *ex parte* order constituted the giving of an "opinion" under *N. J. S.* 2A:15–49(c). That statute provides that no judge shall sit on the trial or argument of any pending controversy when he has "given his opinion upon a matter in question in such action." We find no merit in plaintiff's contention; there was no disqualifying opinion here. The *ex parte* order was, of course, unaccompanied by any legal argument or plenary consideration

of the legal issues. The assignment judge, intimately acquainted with the bar association's long continuing efforts to correct the lack of adequate court facilities, and in the exercise of his administrative responsibilities, routinely entered the order calling upon the freeholder board to take action to meet a felt need. In this connection it should be observed that *N. J. S.* 2A:15–49 also provides that a trial judge is not disqualified merely because he has given his opinion on any question in controversy in the pending action in the course of previous proceedings therein.

Contrary to plaintiffs' position, we find nothing in the law which requires that the courtroom facilities had to be located at the county seat. Our State Constitution carries no such requirement, nor does our statute law. Plaintiffs rely on *L.* 1918, *c.* 185, now *N. J. S. A.* 40:19–1 to 9. The provisions of that act are inapplicable; they deal with a situation where the county electorate has voted to change the location of the county seat, in which case the courts are to be established at that place.

We need not decide whether the court itself—here acting through the assignment judge—may order that additional court facilities be provided at other than the county seat. The fact is that the freeholder board, after consulting with the assignment judge and considering the independent study made by its special committee, authorized the new courtrooms in Atlantic City. Under *N. J. S. A.* 40:32–3 a freeholder board may purchase, erect or otherwise acquire and maintain such buildings as may be necessary and suitable for the accommodation of the courts required to be held in the county. And *R.S.* 40:32–1 provides that where the board is empowered to acquire real estate or construct any buildings for any purpose, it may acquire such real estate or buildings by lease.

The judgment is affirmed.

CHAPTER 19

COUNTY SEAT

"40:19–1. Change of county seat

The county seat of any county may be changed from one municipality to another therein, in the manner hereafter in this chapter provided.

40:19–2. Resolution; submission to voters

In order to effect the change, the board of chosen freeholders shall adopt a resolution that the county seat shall be changed to a municipality other than that in which it is then located, designating the other municipality by name.

The resolution shall not become effective until a majority of the legal voters of the county shall vote in the manner hereinafter provided, for the proposed change.

40:19–3. Petition for resolution; resolution on initiative of board

If a petition signed by at least twenty per cent of the legal voters of the county shall be presented to the board, requesting such a change of the county seat from one municipality to another therein named, the board shall pass a resolution therefor.

The board of chosen freeholders may pass such resolution on its own initiative.

40:19–4. Referendum

Upon the passage of the resolution, the clerk of the board of chosen freeholders shall forthwith transmit a certified copy thereof to the proper officer, notifying him that a vote is desired upon the question. Such officer shall, in

the manner and form provided by law, place the same upon the ballots used at the next general election occurring not less than thirty days after the passage of the resolution.

40:19–5. Ballot; form and content

The question shall be printed upon the ballots to be used at the election in substantially the following form:

"To vote upon the public question printed below, if in favor thereof mark a cross (×) or plus (+) in the square at the left of the word YES, and if opposed thereto mark a cross (×) or plus (+) in the square at the left of the word NO.

"Shall the county seat of ..... county

☐ YES be changed from ..... to .....

☐ NO (specify names of municipalities)?"

40:19–6. Submission at general election; law applicable

The question shall be voted upon at said next general election, and the votes shall be canvassed, and the result determined and announced in the manner provided by the laws relating to elections.

40:19–7. Vote required for adoption; board to provide accommodations

If a majority of the legal voters voting at the election shall vote YES the board of chosen freeholders shall thereupon provide suitable lands and buildings necessary for the accommodation of the courts and officers, and for the transaction of the business of the county in the municipality to which the change shall be made, and shall suitably furnish and equip such buildings.

N. J. S. A. 40:19–1 through 9

40:19–8. Courts and county officers established in new county seat

After the acquisition and furnishing of such buildings, the courts of the county and all the county officers shall be established therein. As amended L. 1953, c. 37, p. 637 § 22, eff. March 19, 1953.

40:19–9. Resubmission

A vote upon such question shall not be taken oftener than once in five years in the same county."